

Via Email, Facsimile, and U.S. Mail

January 24, 2005

California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93941-7906

**Re: Initial Objections and Comments on Draft Order No. R3-2005-0021  
(Pebble Beach Company)**

Dear Sirs:

Pebble Beach Company ("PBCo") has received Draft Cease and Desist Order No. R3-2005-0021 (the "Draft CDO") from the California Regional Water Quality Control Board, Central Coast Region (the "Regional Board") requiring PBCo to either (a) cease all discharge of stormwater along our coastline within the Carmel Bay ASBS boundaries (City of Carmel Boundary north to Pescadero Pt.) or (b) to apply for an exception if it can be proven that the exception "will not compromise protection of ocean waters for beneficial uses, and the public interest will be served". This letter is intended to serve as PBCo's initial objections to and comments on the Draft CDO.

Dry and wet-weather run-off and seepage of stormwater, groundwater, landscape irrigation, and other waters have occurred over and through PBCo's coastline property for nearly one hundred years. Much of this run-off is filtered through natural drainage swales and creeks, though a portion is also transported via drainage culverts, particularly at the end-point near the coastline. Both the Monterey Bay National Marine Sanctuary and the Carmel Bay ASBS were designated to maintain their high water and marine life quality long after the construction of Pebble Beach Golf Links (frequent site of the United States National Golf Championship and other major events), The Lodge at Pebble Beach, and much of the existing development in this area of unincorporated Del Monte Forest, Monterey County. In addition, this section of the Del Monte Forest coastline has been utilized by scientific and educational institutions for years to study intertidal life, kelp forests, and marine mammals specifically because of its high habitat value. To our knowledge, there is no evidence that any of the run-off from the Del Monte Forest has caused any degradation in the water quality of the Carmel Bay ASBS. For all of these reasons, PBCo believes that none of these run-off discharge points identified by the staff report have altered the natural water quality of the Carmel Bay ASBS. Nor do we believe that PBCo is discharging any "wastes" into the ASBS.

PBCo also believes, similarly to LA County and CalTrans, that the Ocean Plan should not be applied to stormwater discharges in the absence of a statewide policy, and that the State Water

Resources Control Board (the "State Board") is obligated, pursuant to Water Code Sections 13241 and 13242, to conduct an analysis of the impacts of the application of the Ocean Plan to stormwater discharges. A second legal issue is whether the State Board ever followed the requisite administrative procedures before changing its policy such that the prohibition is now applied to stormwater. Another legal concern is that no CEQA analysis has been done of the determination that the Ocean Plan rules should be applied to stormwater or dry season water discharges. For the record, PBCo also draws to the Regional Board's attention the arguments presented by CalTrans in its document entitled "Concerns Related to the Proposed Ban on Storm Water Discharges to ASBS", dated December 2, 2004. Many of the concerns raised by CalTrans apply with respect to PBCo's stormwater and dry weather discharges into the Carmel Bay ASBS. To the extent such concerns apply, PBCo adopts and incorporates the objections and concerns of Caltrans in this letter.

Finally, there are also potential takings implications given that a possible reading of the CDO is to strip PBCo of long-held drainage rights that pre-dated the ASBS designations in the 1970s. The legal justification for taking PBCo's drainage rights, which have existed uninterrupted for many years, without just compensation must be considered as part of this process.

In the event that the Board is shown to have the right to issue the CDO, and regulate stormwater and other dry season water discharges as proposed in the CDO, PBCo intends to apply for an exemption on the ground that the stormwater and other points of discharge from the Del Monte Forest to the Carmel Bay ASBS do not and will not alter the natural water quality of the ASBS, nor do they constitute waste. We question, however, some of the stringent requirements for an exemption for the Del Monte Forest area owned by PBCo, for the same reasons we listed above with respect to the Board's decision to issue the CDO in the first place.

The current CDO calls for the following to justify an exemption:

- Preparation of a CEQA document supporting the exception request
- Cessation of all non-stormwater discharges unless it can be proven that they are not significant contributors of pollutants to the ASBS
- Complete map of the storm drain system
- Submission of a financial analysis for development and implementation of the CDO
- A quantitative survey of benthic marine life
- A bioaccumulation study using sand crabs and mussels to determine concentrations of metals near and far field.
- Effluent sampling and monitoring at representative discharge points for 88 different possible constituents
- For any pollutants found, steps must be identified that will be taken to identify the source of the pollutants and the appropriate Best Management Practices (BMP's) to eliminate the causes.

The biological studies and effluent monitoring required alone would have significant financial impacts on PBCo. The cost of such testing must bear a reasonable relationship to the benefits to be derived from such testing, as required by California Water Code Section 13267. Again, given the history of stormwater and other run-off from the Del Monte Forest, and the fact that we are aware of no evidence that the quality of the Carmel Bay ASBS has been adversely affected as a result of any discharge or other activity of PBCo, we believe there is no reasonable relationship between the costs of monitoring programs and the unknown and unarticulated benefits. Absent such a reasonable relationship, PBCo is being unfairly asked to pay for the background studies and monitoring that should be done by the State to even determine if there is even a water quality problem in the first place.

We are also in agreement with Hopkins Marine Station, Monterey Bay Aquarium, and Central Coast Regional Board staff that the presence of pollutants in sampled effluent will not determine the responsible party to the possibly degraded receiving water quality due to dilution, historical climate based changes, and other potential factors. Historical receiving water data is also limited in its helpfulness as a comparison to the significant new data being requested by the CDO, as scientists have shown that global climate change as well as many other naturally occurring factors may have had significant effects on receiving water quality. In sum, there are many reasons to question whether the data being requested will be helpful in determining whether the receiving waters are more polluted than they were 5, 10, or even 20 years ago, and, even if that could be established, which entities, if any, are responsible (or whether natural causes are the reason).

PBCo intends to present additional evidence regarding the legality and propriety of the CDO and the exemption requirements at any public hearings on the CDO. Given the complex issues raised above, however, we would respectfully request that the February 11, 2005, hearing be continued to a future date to allow further time to prepare and to discuss the issues with the State Board and other interested parties. We wish to be cooperative with any reasonable programs that are proposed. But the significant costs at stake, as well as the lack of current knowledge of any water quality problems (or potential causes), would appear to justify moving more deliberately in this area.

Thank you for your consideration of our position.

Respectfully Submitted,

Pebble Beach Company

By: \_\_\_\_\_  
Mark Stilwell

Its: Executive Vice President, Real Estate, and General Counsel

C: Anthony Lombardo, Esq.